

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATHANIEL COOPER,

Plaintiff,

- against -

THE COUNTY OF SUFFOLK, THE SUFFOLK
COUNTY POLICE DEPARTMENT, THE TOWN OF
SOUTHAMPTON, THE SOUTHAMPTON TOWN
POLICE DEPARTMENT, THE SUFFOLK COUNTY
DISTRICT ATTORNEY'S OFFICE, and
"JOHN DOE," a person or firm whose name
is currently unknown,

Defendants.
-----X

NOTICE OF REMOVAL

Docket No.:

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE, that defendants hereby remove to this Court the state court action described below.

1. On February 26, 2014, an action was commenced in Supreme Court, Suffolk County by Nathaniel Cooper against The County of Suffolk, the Suffolk County Police Department, the Town of Southampton, the Southampton Town Police Department, the Suffolk County District Attorney's Office and "John Doe." The case is pending in that court under Index No. 14-04079.

2. The Town of Southampton and the Southampton Town Police Department ("the Southampton defendants") were served with the Summons and Complaint on March 10, 2014. Upon information and belief, the County of Suffolk, the Suffolk County Police Department, and the Suffolk County District Attorney's Office ("the County defendants") were served at or about the same time.

3. The Summons and Complaint filed in the state Court Action is attached as Exhibit A.

4. This Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446, in that it is filed within thirty (30) days of the service of the Summons and Complaint.

5. Removal to federal court of an action commenced in state court is proper when the action could have been commenced by petitioners in federal court under the court's original jurisdiction. 28 U.S.C. § 1441. According to 28 U.S.C. § 1331, the district courts have original jurisdiction of all civil actions "arising under" the Constitution, laws or treaties of the United States. Pursuant to 28 U.S.C. § 1441, a defendant may remove a state court action to federal court where the federal court would have had original jurisdiction over the action. Included in the causes over which Federal District Courts have subject matter jurisdiction are causes of action "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Federal district courts also have supplemental jurisdiction over state law claims "that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367; Shea v. Union Free Sch. Dist. of Massapequa, 682 F.Supp.2d 239, 241 (E.D.N.Y. 2010).

6. This action is one which clearly could have been commenced in federal court, and which arises under both the Federal Constitution and federal statutes. Plaintiff's complaint alleges false arrest, false imprisonment and malicious prosecution, violations of plaintiff's Fourth Amendment rights to be free from unreasonable searches and seizures, as well as violation of plaintiff's Fourteenth Amendment due process rights, privileges and immunities through 42 U.S.C. §1983. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331. The federal

claims are claims which may be removed to this Court by defendants pursuant to the provisions of 28 U.S.C. §1443.

7. This Court has supplemental jurisdiction of plaintiff's claims under the New York State Constitution, as well as his state law false arrest, false imprisonment and malicious prosecution claims, pursuant to 28 U.S.C. § 1367.

8. All of the named defendants, with the exception of "John Doe", have been informed of and join in the within request.¹ As concerns "Joe Doe", it is well-established that a nominal or formal party may be disregarded, and the failure of an improperly joined party to participate in the removal will not defeat removal. Bradford v. Harding, 284 F.2d 307 (2d Cir. 1960). As such, it is respectfully submitted that removal is proper herein.

9. Upon filing this Notice of Removal, written notice of this filing is being provided as required by law. A copy of this notice is also being filed with the Clerk of the Supreme Court, County of Suffolk, where the case was originally filed.

WHEREFORE, defendants hereby respectfully request that this action be removed to the United State District Court, Eastern District of New York and adjudicated.

Dated: Smithtown, New York
March 20, 2014

DEVITT SPELLMAN BARRETT, LLP
Attorneys for Defendants

By: _____/S/_____
Kelly E. Wright (KW 3904)
50 Route 111, Suite 314
Smithtown, New York 11787
(631) 724-8833

¹ The County of Suffolk, by Arlene Zwilling, Esq., has indicated that they consent to the within removal.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
COOPER, NATHANIEL

DEFENDANTS
THE COUNTY OF SUFFOLK, ET AL.

(b) County of Residence of First Listed Plaintiff Suffolk County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Suffolk County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Law Offices of Peter S. Smith, PLLC
389 Fort Salonga Road, Suite 2, Northport, NY 11768
(631) 897-9374

Attorneys (If Known)
See Attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1331, 28 U.S.C. §1441

Brief description of cause:

False arrest/imprisonment, malicious prosecution; §1983 Fourth and Fourteenth Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
03/20/2014

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: Peter S. Smith

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Kelly E. Wright, counsel for Southampton defendants, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is 'related' to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed 'related' to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be 'related' unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? _____
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes

☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes

(If yes, please explain)

☒ No

I certify the accuracy of all information provided above.

Signature: Kelly E. Wright

ATTORNEYS FOR DEFENDANTS

DEVITT SPELLMAN BARRETT, LLP
Attorneys for Defendants TOWN OF
SOUTHAMPTON and SOUTHAMPTON TOWN
POLICE DEPARTMENT
50 Route 111, Suite 314
Smithtown, New York 11787
631-724-8833

Dennis M. Brown, Esq.
SUFFOLK COUNTY ATTORNEY
ATTORNEYS FOR COUNTY OF SUFFOLK,
SUFFOLK COUNTY POLICE DEPT,
AND SUFFOLK COUNTY DISTRICT
ATTORNEY'S OFFICE
H. Lee Dennison Building
100 Veterans Memorial Highway, Box 6100
Hauppauge, New York 11788
631-853-5831

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATHANIEL COOPER,

Plaintiff,

- against -

THE COUNTY OF SUFFOLK, THE SUFFOLK
COUNTY POLICE DEPARTMENT, THE TOWN OF
SOUTHAMPTON, THE SOUTHAMPTON TOWN
POLICE DEPARTMENT, THE SUFFOLK COUNTY
DISTRICT ATTORNEY'S OFFICE, and
"JOHN DOE," a person or firm whose name
is currently unknown,

Defendants.

-----X

ANSWER

Docket No.: 14-CV-1820
(LDW)(AKT)

JURY TRIAL DEMANDED

Defendants, THE TOWN OF SOUTHAMPTON and THE SOUTHAMPTON TOWN
POLICE DEPARTMENT, by their attorneys, DEVITT SPELLMAN BARRETT, LLP,
answering plaintiff's complaint, respectfully allege the following:

FIRST: Deny knowledge or information sufficient to form a belief as to the
allegations contained in paragraphs numbered "1" and "7" of the complaint.

SECOND: Deny the allegations contained in paragraphs numbered "2", "3", "5", "6",
"8", "13" and "18" of the complaint, and refer all questions of law to the Honorable Court.

THIRD: Deny the allegations contained in the paragraph numbered "9" of the
complaint, except admit that on or about January 19, 2011, at approximately 3:00 a.m., in the
Town of Southampton, County of Suffolk, State of New York, the plaintiff, NATHANIEL
COOPER, was arrested.

FOURTH: Deny the allegations contained in the paragraph numbered "10" of the complaint, except admit that on or about June 22, 2011, NATHANIEL COOPER was indicted for Criminal Possession of a Controlled Substance Fifth Degree and other related charges.

FIFTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "11" of the complaint except admit that on or about the 11th day of December 2012, plaintiff was discharged from custody by the Honorable Gary Weber.

SIXTH: Deny the allegations contained in the paragraph numbered "12" of the complaint, except admit that a Notice of Claim was served.

SEVENTH: Deny the allegations contained in the paragraph numbered "15" of the complaint, except admit that the claim has not been settled.

EIGHTH: Deny the allegations contained in the paragraph numbered "16" of the complaint, except admit that a 50-h hearing was held.

NINTH: Deny the allegations contained in paragraph numbered "17" of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION

TENTH: In response to paragraph numbered "19" of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

ELEVENTH: Deny the allegations contained in paragraphs numbered "20", "21", "22", "23", "24", "25", "29", "30", "31", "32" and "33" of the complaint.

TWELFTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "26" of the complaint.

THIRTEENTH: Deny the allegations contained in the paragraph numbered "27" of the complaint, except admit that on or about the 11th day of December 2012, in the County Court, County of Suffolk and State of New York, the plaintiff was discharged from custody by the Honorable Gary Weber.

FOURTEENTH: Deny the allegations contained in paragraph numbered "28" of the complaint, and refer all questions of law to the Honorable Court.

ANSWERING THE SECOND CAUSE OF ACTION

FIFTEENTH: In response to paragraph numbered "34" of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

SIXTEENTH: Deny the allegations contained in paragraphs numbered "35", "36", "37", "38", "39", "40", "42", "43", and "44" of the complaint.

SEVENTEENTH: Deny the allegations contained in the paragraph numbered "41" of the complaint, except admit that on or about the 11th day of December 2012, in the County Court, County of Suffolk and State of New York, the plaintiff was discharged from custody by the Honorable Gary Weber.

ANSWERING THE THIRD CAUSE OF ACTION

EIGHTEENTH: In response to paragraph numbered "45" of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

NINETEENTH: Deny the allegations contained in paragraphs numbered "46", "47", "48", "49", "50", "51", "52" and "53" of the complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

TWENTIETH: In response to paragraph numbered "54" of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

TWENTY-FIRST: Deny the allegations contained in paragraphs numbered "55", "56", "57", "58", "59", "60", "61" and "62" of the complaint.

ANSWERING THE FIFTH CAUSE OF ACTION

TWENTY-SECOND: In response to paragraph numbered "63" of the complaint, the defendants repeat, reiterate and reallege each and every response heretofore made with the same force and effect as if the same were set forth at length herein.

TWENTY-THIRD: Deny the allegations contained in paragraphs numbered "64" and "65" of the complaint.

FIRST AFFIRMATIVE DEFENSE

TWENTY-FOURTH: The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

TWENTY-FIFTH: The damages sustained by the plaintiff, if any, were caused by the plaintiff's own culpable and/or negligent conduct.

THIRD AFFIRMATIVE DEFENSE

TWENTY-SIXTH: The complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or civil rights claim under federal law.

FOURTH AFFIRMATIVE DEFENSE

TWENTY-SEVENTH: No policy, statement, regulation or decision officially

adopted and/or promulgated by defendants or otherwise ratified by defendants authorized or caused a deprivation of the plaintiff's constitutional rights.

FIFTH AFFIRMATIVE DEFENSE

TWENTY-EIGHTH: No custom or practice adopted, followed, endorsed or ratified by the defendants authorized or caused a deprivation of plaintiff's constitutional rights.

SIXTH AFFIRMATIVE DEFENSE

TWENTY-NINTH: The doctrines of respondeat superior and vicarious liability do not apply to a civil rights claim.

SEVENTH AFFIRMATIVE DEFENSE

THIRTIETH: Municipal defendants are not liable for punitive damages.

EIGHTH AFFIRMATIVE DEFENSE

THIRTY-FIRST: Plaintiff has failed to comply with statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

NINTH AFFIRMATIVE DEFENSE

THIRTY-SECOND: Plaintiff's claims, if any, are in whole or in part barred by the doctrines of collateral estoppel and/or res judicata.

TENTH AFFIRMATIVE DEFENSE

THIRTY-THIRD: Plaintiff's claims, if any, are barred in whole or in part by the statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

THIRTY-FOURTH: The defendants' actions, if any, were justified by the facts and circumstances presented.

TWELFTH AFFIRMATIVE DEFENSE

THIRTY-FIFTH: The defendants at all times acted reasonably and in good faith in the discharge of their duties and responsibilities.

THIRTY-SIXTH: The defendants acted solely pursuant to their duties and responsibilities as public officials.

THIRTY-SEVENTH: The defendants reasonably believed that they were exercising and acting within their statutory and constitutional powers and pursuant to federal and/or state law. In performing such responsibilities, defendants are and were protected by absolute and/or qualified immunity.

THIRTEENTH AFFIRMATIVE DEFENSE

THIRTY-EIGHTH: To the extent that the complaint purports to set forth any pendent state law claims, they are barred by the plaintiff's failure to comply with a statutory condition precedent to the commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

FOURTEENTH AFFIRMATIVE DEFENSE

THIRTY-NINTH: The search was conducted pursuant to a lawful warrant.

FIFTEENTH AFFIRMATIVE DEFENSE

FORTIETH: The defendants had probable cause to arrest, search and prosecute plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

FORTY-FIRST: Plaintiff was arrested pursuant to a valid warrant.

SEVENTEENTH AFFIRMATIVE DEFENSE

FORTY-SECOND: Plaintiff committed the crime for which he was arrested and he, by his own conduct, contributed to the conviction at issue.

EIGHTEENTH AFFIRMATIVE DEFENSE

FORTY-THIRD: Plaintiff is not entitled to recover for alleged unjust conviction from the Town of Southampton; his remedy, if any, lies against the State of New York.

NINETEENTH AFFIRMATIVE DEFENSE

FORTY-FOURTH: The criminal charges against plaintiff were not terminated in his favor.

TWENTIETH AFFIRMATIVE DEFENSE

FORTY-FIFTH: The physical contact, if any, with plaintiff was privileged and necessary to effectuate the lawful search and arrest of plaintiff.

TWENTY-FIRST AFFIRMATIVE DEFENSE

FORTY-SIXTH: Plaintiff knowingly and without coercion and with assistance of counsel pled guilty to the crimes he was charged with.

TWENTY-SECOND AFFIRMATIVE DEFENSE

FORTY-SEVENTH: The Town of Southampton Police Department is not an entity susceptible to suit.

WHEREFORE, defendants, THE TOWN OF SOUTHAMPTON and THE SOUTHAMPTON TOWN POLICE DEPARTMENT, demand judgment against the plaintiff dismissing the Complaint, together with the costs, disbursements and such other further relief

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

The undersigned being duly sworn, deposes and says:

Deponent is not a party to this action, is over 18 years of age and resides at Holbrook, New York.

That on March 28, 2014, deponent served the annexed ANSWER upon:

LAW OFFICES OF PETER S. SMITH
Attorneys for Plaintiff
389 Fort Salonga Road, Ste. 2
Northport, New York 11768

Dennis M. Brown, Esq.
SUFFOLK COUNTY ATTORNEY
ATTORNEYS FOR COUNTY OF SUFFOLK, SUFFOLK COUNTY POLICE DEPT,
AND SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE
H. Lee Dennison Building
100 Veterans Memorial Highway, Box 6100
Hauppauge, New York 11788

the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office.

_____/S/_____
ELIZABETH O'ROURKE

Sworn to before me this
28th day of March, 2014.

_____/S/_____
NOTARY PUBLIC